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November 6, 2009

2009 NOV -9 AM 10:21

OFFICE OF GENERAL
COUNSEL

Thomasenia P. Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: **Democracy Engine, Inc., PAC**
C00468314
Request for Advisory Opinion

AOR 2009-28

Dear Ms. Duncan:

Pursuant to 2 U.S.C. § 437f and 11 CFR § 112.1, this letter requests an advisory opinion on behalf of Democracy Engine, Inc., PAC ("Democracy Engine PAC"). Democracy Engine PAC asks whether the fundraising program outlined below ("the Program") conforms to the requirements of the Federal Election Campaign Act ("the Act") and the regulations of the Federal Election Commission ("the Commission").

Democracy Engine PAC is a political committee that has registered with the Commission and is a separate segregated fund ("SSF") of Democracy Engine, Inc., a Delaware corporation. Democracy Engine PAC was not established by, and is not financed, maintained, or controlled by, any federal candidate or political party committee, and it is not affiliated with any other federal political committee within the meaning of 11 CFR § 100.5(g).

BACKGROUND

Democracy Engine PAC intends to act as a "conduit" or "intermediary," as defined by 11 C.F.R. § 110.6(b)(2), in soliciting lawful individual contributors among the general public to make contributions to Democracy Engine PAC that are "earmarked" for specific candidates for federal office, as defined by 11 C.F.R. § 110.6(b)(1). *See generally* 2 U.S.C. § 441a(a)(8). In doing so, Democracy Engine PAC will conduct itself as follows:

1. Democracy Engine PAC will not solicit funds for itself as a part of the Program. If any solicited individual makes a contribution to Democracy Engine PAC that is not earmarked as requested in its solicitation, Democracy Engine PAC will refund that contribution and explain that only an earmarked pass-through contribution will be accepted.
2. Democracy Engine PAC will not coordinate its solicitations of earmarked pass-through contributions with any candidate or authorized committee, within the meaning of 2 U.S.C. § 441a(a)(7)(B)(i) and 11 C.F.R. §§ 109.20 and 109.21. Solicitations may take a variety of forms and be made via a variety of media, and these will comply with all applicable Commission regulations.

3. Democracy Engine PAC will pay all costs associated with its solicitations of earmarked pass-through contributions, including a proportionate share of its overhead expenses, using funds raised from the restricted class of Democracy Engine, Inc. Democracy Engine, Inc. will not pay any costs associated with these solicitations or the administration of the Program.
4. Democracy Engine PAC's solicitations will include all disclaimers required under 11 C.F.R. § 110.11, and they will inform solicited individuals that:
 - a. They must be lawful individual contributors under the Act, which the solicitation will define in accordance with the Act.
 - b. They must identify a federal candidate as the intended recipient of their earmarked pass-through contribution, and their earmarked pass-through contribution will be treated as earmarked for that candidate within the meaning of the Commission's regulations (specifically, 11 C.F.R. § 110.6));
 - c. Contributions to Democracy Engine PAC itself, unearmarked for a federal candidate, will not be accepted and will be refunded to the contributor; and
 - d. Earmarked pass-through contributions, added to any other contributions the individual makes separately to the same candidate, must comply with the \$2,400/election limit established by 2 U.S.C. § 441a(a)(1) and 11 C.F.R. § 110.1(b).
5. Democracy Engine PAC will not exercise any direction or control over the contributor's choice of recipient candidate or authorized committee, in accordance with 11 C.F.R. § 110.6(d)(1).
6. All earmarked pass-through contributions will be made and accepted by Democracy Engine PAC only via a personal credit card.
7. While Democracy Engine PAC is still exploring various options to implement the Program and has made no decisions concerning the candidates it may include, earmarked pass-through contributions will be restricted to candidates included in the Program.
8. All earmarked pass-through contributions will be deposited in an account segregated from the account that contains Democracy Engine PAC's operating funds.
9. Democracy Engine PAC will forward all earmarked pass-through contributions to the intended recipient candidate or authorized committee within 10 days of receipt, in accordance with 11 C.F.R. § 102.8(a).
10. The payment to the recipient candidate or authorized committee will be offset by the full processing costs, including credit card processing fees and other expenses such as check

printing and postage, incurred by Democracy Engine PAC for the earmarking transaction. Our intention is to contract with a vendor who will provide all processing services for a flat percentage of each contribution. However, if we are unable to do so, all costs will be allocated among recipients proportional to their earmarked pass-through contributions from a particular contributor.

11. Democracy Engine PAC intends to secure the mailing address for recipient candidates or authorized committees from their filings with the Commission and avoid contact with candidates and authorized committees prior to the first transmission of contributions earmarked for the candidate or authorized committee. After that first transmission, which we expect will be by check, Democracy Engine PAC will communicate with recipient candidates and authorized committees only with respect to administrative matters necessary to continue to transmit earmarked pass-through contributions, such as the nature and method of the transmission, compliance data, updated mailing addresses and the like.
12. Democracy Engine PAC will report to the Commission and to the candidate or authorized committee all transactions related to the earmarked pass-through contributions in accordance with 11 C.F.R. § 110.6(c)(1).

QUESTIONS PRESENTED

1. May Democracy Engine PAC act as a conduit or intermediary for earmarked pass-through contributions to federal candidates if it operates as described above?
2. Will Democracy Engine PAC's expenditures under the Program constitute contributions to recipient candidates or authorized committees if it operates as described above?

DISCUSSION

The Commission's regulations specifically permit an SSF to be a conduit or intermediary. The Commission's rules prohibiting corporate "facilitati[on of] the making of contributions" to candidates pertain only to "using *corporate*... resources or facilities to engage in fundraising activities in connection with any federal election..." 11 C.F.R. § 114.2(f)(1) (emphasis added). "[F]acilitating the making of contributions does not include the following activities if conducted by a separate segregated fund -- ... (ii) Collecting and forwarding contributions earmarked to a candidate in accordance with 11 C.F.R. 110.6." 11 C.F.R. § 114.2(f)(3). As explained above, Democracy Engine PAC will fully comply with 11 C.F.R. § 110.6 in carrying out the Program.

Additionally, the Commission's regulations, at 11 C.F.R. § 110.6(b)(2)(i), set forth the kinds of individuals and entities that "shall not be considered to be conduits or intermediaries," none of which include an SSF or other unaffiliated political committee such as Democracy Engine PAC. The Commission's regulations also define a "prohibited" category of conduits, namely, "[a]ny person who is prohibited from making contributions or expenditures in connection with an election for federal office...." See 11 C.F.R. § 110.6(b)(2)(ii). As a federal

political committee, of course, Democracy Engine PAC is expressly permitted to make contributions and expenditures to federal candidates.

Democracy Engine PAC will not make contributions to recipient candidates and authorized committees by operating the Program. First, because Democracy Engine PAC will exercise no direction or control over the choice of recipient of the individual contributor's contribution, but will simply accept the contributor's earmarking decision and forward the contribution to the designated recipient, the contribution to the recipient will be attributed only to that individual contributor and not to Democracy Engine PAC. See 11 C.F.R. § 110.6(d).

Second, the solicitation costs incurred by Democracy Engine PAC will not be in-kind contributions to the recipient candidates despite the candidate's acceptance of the contributions because solicitations will not be coordinated with any candidate under the applicable standards. See generally 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. §§ 109.20 and 109.21; Advisory Opinion 2003-23, pg. 5.

Finally, because the recipient candidate or authorized committee will pay the actual processing costs incurred by Democracy Engine PAC with respect to the forwarded contribution, Democracy Engine PAC will not make an in-kind contribution to the recipient in that or any other amount. See AO 2007-04.

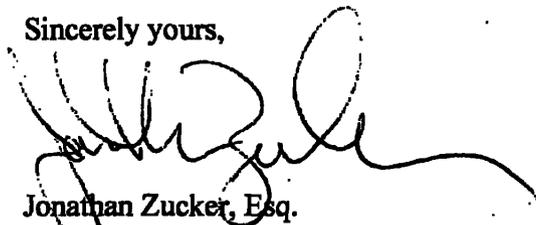
Accordingly, the full contribution amount earmarked by the individual contributor will be the only "contribution" within the meaning of 2 U.S.C. § 431(8) that occurs in the course of the Program's transactions.

CONCLUSION

For the reasons set forth above, Democracy Engine PAC respectfully requests that the Commission issue an advisory opinion answering the two questions presented above in the affirmative. If your office needs any further information concerning this request, please contact the undersigned at jonathan@democracyenginepac.org or (202) 449-9647 or Democracy Engine PAC's counsel, Laurence E. Gold, at lgold@ltsrlaw.com or (202) 328-1666.

Thank you for your time and attention to this matter.

Sincerely yours,



Jonathan Zucker, Esq.
Treasurer

Democracy Engine, Inc., PAC
2125 14th Street, NW #101W
Washington, DC 20009

cc: Laurence E. Gold